SUBJECT INDEX

	Page
Introduction	1
Statement of Facts	2
Argument	4
I. No Substantial Federal Question Is Presented Under Petitioner's Contention That Statements Were Obtained in Violation of her Constitutional Rights to Counsel and Against Self-Incrimination	4
Conclusion	6
Appendix A. Certified Copies of Records of the Municipal Court of San Bernardino Judicial District, County of San Bernardino, State of California.	

TABLE OF AUTHORITIES CITED

Cases	Page
Chapman v. California, 386 U.S. 18	5
Escobedo v. Illinois, 378 U.S. 478	4, 5
Massiah v. United States, 377 U.S. 201	4, 5
People v. Ferdinand, 194 Cal. 555	5
People v. Speaks, 156 Cal. App. 2d 25	5
Standard-Vacuum Oil Co. v. United States, 339 U.S. 157	5

IN THE

Supreme Court of the United States

October Term 1966
No. 1383

LUCILLE MILLER,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of California.

RESPONDENT'S SUPPLEMENTAL OPPOSING BRIEF.

Introduction.

This respondent's supplemental opposing brief is submitted in response to the October 16, 1967, request of this Honorable Court that respondent file a further response in the above entitled case "as to when the agent obtained the statement of the accused in relation to the indictment, information or other charging process." The facts to follow are supported by the clerk's and reporter's transcript which are the part of the certified complete record on appeal which has been filed by petitioner and by certified copies of the records of the Municipal Court of San Bernardino Judicial District, County of San Bernardino, State of California, the originals of which are lodged with this court and

requested to be made a part of the record and copies of which are printed in this supplemental brief as Appendix A.

Statement of Facts.

Petitioner was arrested at about 1:30 p.m. on October 8, 1964, the day of the homicide. At that time she was advised of her rights in that she was told that she did not have to talk with the police if she did not want to; that she could remain silent and that she had a right to consult with an attorney before she talked with the police. She was brought to the county jail and booked. Afterwards she was permitted to talk with Mr. Ward, her attorney, for at least ten minutes. [Rep. Tr. pp. 1017-1019.]

On October 9, 1964, Peggy Fisk was booked into the county jail as a prisoner. However, she was employed by San Bernardino County to work undercover and to pretend to be a prisoner. While in the jail, she became acquainted with petitioner, as a result of which petitioner talked to her about herself, the reason for being in jail, her husband, and her domestic problems. Fisk did not tell petitioner that she was a law enforcement agent, but did tell her that she should discuss these things with her attorney. She did not tell petitioner that she had a right to have an attorney present when she talked to Fisk. Petitioner told Fisk that she and her husband had filed for divorce at one time but had reconciled before his death. She said that she had not loved her husband but that she had respected him. She said that she had always loved Mr. Hayton and still loved him. She said that as soon as this mess was over that she planned to take her daugh-

ter Debbie and the two boys away to Europe with the insurance money. She said that she would receive over $100,000 in insurance because of the accidental death. [Rep. Tr. pp. 1098-1101.] Fisk was not sure as to the date that she was released from the county jail but it was no later than October 15, 1964. She prepared her report as to her conversations with petitioner on October 12, 1964, and partly on October 14, 1964. [Rep. Tr. pp. 1103, 1108.] Fisk had been given instructions by Sheriff Bland of San Bernardino County only to listen to petitioner. [Rep. Tr. p. 1112.] The record is devoid of a single instance in which Fisk asked petitioner a question or said anything to her which induced any of the statements introduced into evidence.

On October 13, 1964, a complaint charging petitioner with murder was filed in the Municipal Court of San Bernardino Judicial District, County of San Bernardino, State of California. Petitioner was arraigned on that date and a preliminary hearing was set for October 23, 1964. (Appendix A.) On October 20, 1964, an indictment charging petitioner with murder was filed in the Superior Court of the State of California. [Clk. Tr. pp. 1-2.] On October 21, 1964, the complaint in the Municipal Court was dismissed. (Appendix A.) It therefore appears from the record that the statements made by appellant to the undercover agent preceded both the complaint in the municipal court and the indictment in the superior court.

ARGUMENT.

I.

No Substantial Federal Question Is Presented Under Petitioner's Contention That Statements Were Obtained in Violation of Her Constitutional Rights to Counsel and Against Self-Incrimination.

Petitioner has contended that she has established a substantial federal question based upon the introduction of statements made to the undercover agent which were introduced into evidence at her trial. She has contended that the statements were obtained in violation of the rules set forth in the case of *Massiah v. United States,* 377 U.S. 201 (1964), and the case of *Escobedo v. Illinois,* 378 U.S. 478 (1964). No substantial federal question is presented by petitioner because the record fails to establish that the undercover agent obtained statements from petitioner in violation of *Massiah* and *Escobedo.* For obvious tactical reasons petitioner intentionally waived the right to complain about the introduction of her statements when she did not object to the testimony. In any event, the testimony was merely cumulative of evidence already properly admitted so that its introduction was harmless beyond any reasonable doubt.

The case of *Massiah v. United States,* 377 U.S. 201, is not in point because that case dealt with a deprivation of counsel after arraignment where the accused had already been indicted when the statements were overheard. In the instant case the statements were made

without the slightest indication of a process of interrogation well before the indictment and before a complaint had been filed and before petitioner had appeared for arraignment in municipal court.

Massiah and *Escobedo* are likewise not in point because in both cases the statements obtained were held to have been the result of a process of interrogation. The record is devoid of any indication of a process of interrogation which resulted in petitioner's statements. In such a state of the record petitioner's contention is clearly subject to the rule that this honorable court will not review questions not clearly raised on the record. *Standard-Vacuum Oil Co. v. United States,* 339 U.S. 157, 160 (1949).

Petitioner's statements to the undercover agent were not confessions as defined in *People v. Speaks,* 156 Cal. App. 2d 25, 34; *People v. Ferdinand,* 194 Cal. 555, 568-569, but were instead merely admissions as defined in the last cited case. Petitioner's statements to the undercover agent were nothing more than a reiteration and a duplication of various statements already properly introduced into evidence and were therefore entirely cumulative. Under the circumstances there is no reasonable possibility that the admission of this cumulative evidence could have affected the verdict of the jury. The admission of the statements was therefore harmless beyond a reasonable doubt. *Chapman v. California,* 386 U.S. 18.

Conclusion.

This concludes the further response to the petition in the instant case. Respondent believes that when the record is examined relevant to the matter complained of, and the Opinion of the California District Court of Appeal is considered, it will be concluded that no right guaranteed by the Constitution of the United States was violated, and that the judgment should stand. Accordingly, respondent submits the matter on the record heretofore presented to this Court, Respondent's opposing Brief, respondent's brief in the Court of Appeal and Answer to Petition for Hearing in the Supreme Court, the Opinion of the California District Court of Appeal, and the arguments set forth above, and requests that the relief asked by this petitioner be denied.

Respectfully submitted,

THOMAS C. LYNCH,
Attorney General,

WILLIAM E. JAMES,
Assistant Attorney General,

PHILIP C. GRIFFIN,
Deputy Attorney General,
Attorneys for Respondent.

COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

No. F 8754

THE PEOPLE OF THE STATE OF CALIFORNIA VS.

LUCILLE MARIE MILLER

DEPUTY DISTRICT ATTORNEY FOR PEOPLE

ATTORNEY FOR DEFENDANT

REPORTER

$

BAIL (CASH OR BOND) POSTED, DATE BY

DISPOSITION OF BAIL DATE

MUNICIPAL COURT SAN BERNARDINO COUNTY EUREKA SAN BERNARDINO JUDICIAL DISTRICT

DATE	
10-13-64	COMPLAINT FILED, Sworn to by WILLIAM PATERSON, Charging defendant with having on October 8, 1964, 19, at and in the County of San Bernardino, State of California committed a FELONY, to-wit: Murder (PC 187) Warrant of arrest issued and given to No. Bail Warrant issued to SO for service. Bail fixed at $ No. Bail
10-13-64	11:00 A.M DDA Turner for People, Atty Edward Foley of Holcomb Kassel & Ward with Deft. Atty states deft will not waive the informing of right. ~~Rmk~~ Deft arr and prel hear set for 10-23-64 at 9:15 AM. The deft's motion to admit deft to bail is denied. Atty Foley for the deft served Notice to the Dist Attorney and Asst DA Turner in open Court. Atty Foley serves notice to the Sheriff on Sheriff Bland in Open Court and gives copies to Court. JBL
10-21-64	Dismissal filed. Deft. indicted by Grand Jury on 10/20/64 for same offense.

I, RUDOLPH L. CORONA, Clerk and Administrative Officer of the Municipal Court, San Bernardino Judicial District, County of San Bernardino, State of California, hereby certify the foregoing instrument to be a full, true and correct copy of the original now on file in my office.

Dated October 18 1967

RUDOLPH L. CORONA, Clerk

By T. Jones Deputy

ORIGINAL

IN THE MUNICIPAL COURT OF SAN BERNARDINO JUDICIAL DISTRICT
COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. LUCILLE MARIE MILLER,

Bail, $ No Bail/ Want to $6

Defendant....

Complaint No. F 5 / 5 /

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO, ss.

On the 13th day of October, 19 64, in the County of San Bernardino, State of California, personally appeared before me William Paterson who, being duly sworn, under oath complains and accuses LUCILLE MARIE MILLER

of the crime of MURDER (P.C. 187)

a felony committed as follows:

That said LUCILLE MARIE MILLER

on or about the 8th day of October, 19 64, ~~in San Bernardino Judicial District~~, in the County of San Bernardino, State of California, did unlawfully murder Gordon Eugene Miller, a human being.

FILED
OCT 13 1964
CLERK SUPERIOR COURT
BY ... DEPUTY

MUNICIPAL COURT SAN BERNARDINO COUNTY EUREKA SAN BERNARDINO JUDICIAL DISTRICT

I, RUDOLPH L. CORONA, Clerk and Administrative Officer of the Municipal Court, San Bernardino Judicial District, County of San Bernardino, State of California, hereby certify the foregoing instrument to be a full, true and correct copy of the original now on file in my office.

Dated October 8 1967

RUDOLPH L. CORONA, Clerk

By ... Deputy

Said complainant therefore prays that warrant may be issued for the arrest of said defendant.... and that ....he.... may be dealt with according to law.

William Paterson

Subscribed and sworn to before me this 13th day of October, 19 64

DAT:eb

J. B. LAWRENCE

Judge of the Municipal Court of San Bernardino Judicial District County of San Bernardino, State of California.

J. R. TRUSLER.
Clerk of the Municipal Court of San Bernardino Judicial District County of San Bernardino, State of California.

By ... Deputy

PA 1432—10M-12-39 SBMC

MUNICIPAL COURT OF SAN BERNARDINO JUDICIAL DISTRICT

F 8754

HON. J. B. LAWRENCE, JUDGE VIVIAN G. JONES, COURT CLERK;

AND THE FOLLOWING PROCEEDINGS WERE HAD:

F. 8754 PEOPLE vs. LUCILLE MARIE MILLER

CHARGE: MURDER (P.C. 187)

Defendant is present in court

Defendant gives true name as charged

Defendant duly arraigned and informed of all legal rights

~~Attorney and defendant duly waives arraignment and informing of legal rights~~

Defendant will Hire Attorney ~~Court appoints Attorney~~

Preliminary hearing set for 10/23/64 @ 9 A.M.

The defendant's Motion to admit to bail is denied

I CERTIFY THAT THE FOREGOING MINUTES ARE CORRECT

AND WERE ENTERED ON OCT 13 1964 DAY OF ....., 19.....

Court Clerk

DIVISION B DATE:

I, RUDOLPH L. CORONA, Clerk and Administrative Officer of the Municipal Court, San Bernardino Judicial District, County of San Bernardino, State of California, hereby certify the foregoing instrument to be a full, true and correct copy of the original now on file in my office.

Dated October 15 1967

RUDOLPH L. CORONA, Clerk

By ..... Deputy

MUNICIPAL COURT SAN BERNARDINO COUNTY EUREKA SAN BERNARDINO JUDICIAL DISTRICT

Form Engraved by Starts — L 66 — 1875 — 193

MUNICIPAL COURT OF SAN BERNARDINO JUDICIAL DISTRICT

F 8754

F 8754 Peo. Vs. LUCILLE MARIE MILLER

Charge: MURDER (P.C. 187)

DIV. B CONVENED AT 11:10 A M:

HON. J. B. LAWRENCE JUDGE; A. SPIOTTO COURT CLERK

DEP. DIST ATTY. Don Turner ; DEFENDANT with

COURT REPORTER — ; King BAILIFF

THE FOLLOWING PROCEEDINGS WERE HAD:

On motion DDA Turner case dismissed in view fact deft inducted by Grand Jury. Release Issued

I CERTIFY THAT THE FOREGOING MINUTES ARE CORRECT

AND WERE ENTERED ON 21 DAY OF October 1964

A Spiotto
Court Clerk

Page 1 of 1 pages. DIVISION B DATE: OCT 21 1964

MUNICIPAL COURT SAN BERNARDINO COUNTY CALIFORNIA SAN BERNARDINO JUDICIAL DISTRICT

I, RUDOLPH L. CORONA, Clerk and Administrative Officer of the Municipal Court, San Bernardino Judicial District, County of San Bernardino, State of California, hereby certify the foregoing instrument to be a full, true and correct copy of the original now on file in my office.

Dated October 18 1967

RUDOLPH L. CORONA, Clerk

By V. Lewis Deputy